oners after its application for medical digency assistance had been denied. In the absence of a county ordinance adopting the guidelines, or any guidance or direction from the legislature as to the time within which a request for hearing must be made after denial of the application, the legislature did not intend to set a specific time limit within which a request for hearing must be made. University of Utah Hosp. v. Minidoka County, 120 Idaho 91, 813 P.2d 902 (1991).

Discharge of Employee.

Where the evidence in the record supported board of education's findings that campus security chief's conduct, which included use of racial slurs during conversations with reporter, evidenced traits of employment incompatibility and that it adversely affected the welfare of college, the board's conclusion that "good cause" existed to discharge him, was not arbitrary, capricious, or an abuse of discretion. Allen v. Lewis-Clark State College, 105 Idaho 447, 670 P.2d 854 (1983).

Discretion of Commission.

The fact that no harm came to the clients involved, and that restitution was subsequently made to the former broker did not rule out suspension of a broker's license; and the Real Estate Commission had the power to revoke the broker's license for violation of its regulations, a five-month suspension was not an abuse of discretion which would require reversal. Staff of Idaho Real Estate Comm'n v. Parkinson, 100 Idaho 96, 593 P.2d 1000 (1979).

The failure to include medical expenses in the determination of a budget deficit was not arbitrary and capricious. Hayman v. State, Dep't of Health & Welfare, 100 Idaho 710, 604 P.2d 724 (1979).

Erroneous Advice Provided by Agency.

Where applicants for zoning change made attempts to determine the status of their first application and were informed by the county that they would have to submit a new application, since a member of the public pursuing an action before an agency should not be penalized for following erroneous advice given by the agency and there was nothing in the record evidencing an intent by applicants to relinquish their rights under the first application for zoning change, they did not waive their right to appeal with respect to such application. Soloaga v. Bannock County, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

ence.

hough evidence of the city council's prior approval of applications for rezoning by other developers was not in the original record of the city council hearing at which the council denied the plaintiff developer's rezoning application, the reviewing court could properly consider the evidence about the other applications since the information was of public record at the time of the plaintiff's hearing before the city council, the city council was certainly aware of its own previous actions in approving those other applications, and, in fact, the city council had stipulated that the facts concerning the other applications were true and correct. Workman Family Partnership v. City of Twin Falls, 104 Idaho 32, 655 P.2d 926 (1982).

In situations where no procedural irregularities before the administrative agency were alleged and the case heard as an administrative appeal, the hearing must be confined to the record; admitting additional evidence when procedural irregularities were not alleged in essence results in an impermissible trial de novo. Clow v. Board of County Comm'rs, 105 Idaho 714, 672 P.2d 1044 (1983).

Generally, a review is confined to the record unless there were alleged procedural irregularities before the agency and under those circumstances the statute stated that proof may be taken in the court; accordingly, where the issues in a particular action were limited and no procedural irregularities before the agency were alleged by the parties before or during the appeal hearing, the district court erred when it admitted additional evidence and entered findings of fact and conclusions of law, even if the parties had agreed to allow the court to hear additional evidence, since former law required that any additional evidence be presented before the agency. Clow v. Board of County Comm'rs, 105 Idaho 714, 672 P.2d 1044 (1983).

Where a developer appealed to the district court from an adverse decision by the county board of commissioners on his rezoning application, the district court did not err in refusing to allow the developer to augment the record before the district court with minutes of previous planning and zoning commission meetings, where the developer made no application to the court to present additional evidence as required by former law did not show why the evidence was not presented at the hearing before the county commissioners. Drake v. Craven, 105 Idaho 734, 672 P.2d 1064 (Ct. App. 1983).

Under former law, the district court erred in permitting additional evidence to be submitted on appeal; if the additional evidence was material and there was good reason for failure to present it at the proceeding before the board of commissioners, former law permitted the district court to order the taking of the additional evidence by the agency, which may then modify its findings and conclusions based upon the additional evidence. However, the district court could not hear the addi-

tiona
and r
sions
Idahc
Wh
only
rezor
decis
cial, e
ing c
subst
ronec
Comr
(1986
Wh
of cou
medic
board
regar
issues
sugge
would
not pr
expar
tal's p
dure.
Coun
1062
Dis
evide
the p
involv
shoul
on th
applic
count
mora
ings r
or cor
the ar
the a
dural
Coun
App.

Exan

Wh
medic
vices,
provic
compl
of Vo
requir
requir
sion's
rehab
stitut
violat
divisi
unlaw
nothir
view c
consic
Educ.

tional evidence for the first time on appeal and make its own findings of fact and conclusions of law. Daley v. Blaine County, 108 Idaho 614, 701 P.2d 234 (1985).

Where the applicants' property was the only property in the area which had not been rezoned, the board of county commissioner's decision to rezone the property as commercial, even though it was contrary to the existing comprehensive plan, was supported by substantial evidence and was not clearly erroneous. Ferguson v. Board of County Comm'rs, 110 Idaho 785, 718 P.2d 1223 (1986).

Where, in the hospital's appeal of the board of county commissioners' denial of funds for medical indigency, the transcript of the board's hearing contained an extended debate regarding the board's authority to limit the issues before it, and the hospital did not suggest what other evidence of irregularities would have been submitted, the hospital was not prejudiced by the district court's refusal to expand the record by entertaining the hospital's proffer of alleged irregularities in procedure. University of Utah Hosp. v. Board of County Comm'rs, 113 Idaho 441, 745 P.2d 1062 (Ct. App. 1987).

District court properly admitted extraneous evidence relevant to procedural deficiency in the process of determining whether action involving application for zoning change should be remanded for final determination on the merits where, after making initial application, applicants were informed by county that such application was voided by moratorium, the county conducted no hearings nor were there ever any findings of fact or conclusions of law entered with respect to the application, for in effect the suspension of the application by the county was a procedural irregularity. Soloaga v. Bannock County, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

Examination of Record.

Where the record on appeal indicated that a medically disabled plaintiff was afforded services, education and a rehabilitation plan as provided by law and that the plan was not completed by plaintiff although the Division of Vocational Rehabilitation did everything required of it, there was nothing in the record requiring reversal or modification of the division's decision denying him further vocational rehabilitation benefits as there were no constitutional or statutory provisions that were violated, the decision was not in excess of the division's or agency's authority, there were no unlawful procedures followed by the division; nothing in the record constituted error in view of the evidence submitted and the record considered as a whole. Fuller v. State Dep't of Educ. Div. of Vocational Rehabilitation, Inc., 117 Idaho 126, 785 P.2d 690 (Ct. App. 1990).

Exhaustion of Administrative Remedies.

State employees not able to appeal a grievance to the Personnel Commission had exhausted all administrative remedies available within the agency and were entitled to judicial review under the State Administrative Procedure Act. Sheets v. Idaho Dep't of Health & Welfare, 114 Idaho 111, 753 P.2d 1257 (1988).

In routine tax assessment complaints, the pursuit of statutory administrative remedies is a condition precedent to judicial review, however, the rule that administrative remedies must be exhausted before the district court will hear a case is a general rule and has been deviated from in some cases. Fairway Dev. Co. v. Bannock County, 119 Idaho 121, 804 P.2d 294 (1990).

The exceptions to the exhaustion of administrative remedies doctrine did not apply where the issue was the correctness of tax assessments. In such a case, the district court did not acquire subject matter jurisdiction until all the administrative remedies have been exhausted. Fairway Dev. Co. v. Bannock County, 119 Idaho 121, 804 P.2d 294 (1990).

Final Decisions.

Where letters from county officials to petitioners for zoning change referred to initial zoning application as being voided by zoning moratorium and informed them that the process initiated by their first application had been truncated, they contained nothing setting forth facts or conclusions of law regarding the first application for a zoning change, and thus they were not final decisions and did not trigger the limitation period provided for in former law. Soloaga v. Bannock County, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

Findings.

Where an incorrect standard of proof was applied by the hearing officer in a hearing to determine eligibility for aid to dependent children, the district court erred in substituting its own findings and the case had to be remanded to an administrative hearing officer to resolve a conflict in the evidence. Tappen v. State, Dep't of Health & Welfare, 98 Idaho 576, 570 P.2d 28 (1977).

Judicial review of an administrative order is confined to the record under former law; accordingly, a district court improperly substituted its own findings of fact for those made by a hearing officer where the review of the district court was made on the record of the administative officer and the findings of the hearing officer were clear, concise, dispositive and supported by the evidence. Van Orden v. State, Dep't of Health & Welfare, 102 Idaho 663, 637 P.2d 1159 (1981).

If there were no findings of fact and conclu-

zoning change including the initial application, applicants conceded that their rights under the first application were never placed in issue during the 1985 proceedings because the county had made it clear it had expected them to proceed under the 1984 ordinance and the record demonstrated the county considered initial application as void, it was unnecessary for applicants to exercise an act of futility by reasserting their rights under the initial application during the proceedings under the 1984 application and thus the questions relating to the first application were properly preserved for an appeal. Soloaga v. Bannock County, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

—Aggrieved Person.

A municipality or town was deemed to be an "aggrieved person" within the meaning of former law when appealing a decision of its zoning appeals board. City of Burley v. McCaslin Lumber Co., 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984).

67-5271. Exhaustion of administrative remedies. — (1) A person is not entitled to judicial review of an agency action until that person has exhausted all administrative remedies required in this chapter.

(2) A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency action would not provide an adequate remedy. [I.C., § 67-5271, as added by 1992, ch. 263, § 43, p. 783.]

Sec. to sec. ref. Sections 67-5271 through 67-5279 are referred to in § 67-5270.

This section is referred to in § 67-5273.

67-5272. Venue — Form of action. — (1) Except when required by other provision of law, proceedings for review or declaratory judgment are instituted by filing a petition in the district court of the county in which:

(a) the hearing was held; or

(b) the final agency action was taken; or

(c) the aggrieved party resides or operates its principal place of business in Idaho; or

(d) the real property or personal property that was the subject of the agency decision is located.

(2) When two (2) or more petitions for judicial review of the same agency action are filed in different counties or are assigned to different district judges in the same county, upon motion filed by any party to any of the proceedings for judicial review of the same agency action, the separate consideration of the petitions in different counties or by different district judges shall be stayed. The administrative judge in the judicial district in which the first petition was filed, after appropriate consultation with the affected district judges and the affected administrative judges, shall then order consolidation of the judicial review of the petitions before one (1) district judge in one (1) county in which a petition for judicial review was properly filed, at which time the stay shall be lifted. [I.C., § 67-5272, as added by 1992, ch. 263, § 44, p. 783; am. 1995, ch. 270, § 4, p. 868.]

Compiler's notes. Section 3 of S.L. 1995, ch. 270 is compiled as § 67-5250.

67-5273. Time for filing petition for review. — (1) A petition for judicial review of a final rule may be filed at any time, except as limited by section 67-5231, Idaho Code.

(2) A petition for judicial review of a final order or a preliminary order that has become final when it was not reviewed by the agency head or preliminary, procedural or intermediate agency action under section 67-5271(2), Idaho Code, must be filed within twenty-eight (28) days of the issuance of the final order, the date when the preliminary order became final, or the issuance of a preliminary, procedural or intermediate agency order, or, if reconsideration is sought, within twenty-eight (28) days after the decision thereon. A cross-petition for judicial review may be filed within fourteen (14) days after a party is served with a copy of the notice of the petition for judicial review.

(3) A petition for judicial review of a final agency action other than a rule or order must be filed within twenty-eight (28) days of the agency action, except as provided by other provision of law. The time for filing a petition for review shall be extended during the pendency of the petitioner's timely attempts to exhaust administrative remedies, if the attempts are clearly not frivolous or repetitious. A cross-petition for judicial review may be filed within fourteen (14) days after a party is served with a copy of the notice of the petition for judicial review. [I.C., § 67-5273, as added by 1992, ch. 263, § 45, p. 783; am. 1993, ch. 216, § 110, p. 587; am. 1995, ch. 270, § 5, p. 868.]

Compiler's notes. Sections 109 and 111 of S.L. 1993, ch. 216 are compiled as §§ 67-5252 and 67-6519, respectively.

67-5274. Stay. — The filing of the petition for review does not itself stay the effectiveness or enforcement of the agency action. The agency may grant, or the reviewing court may order, a stay upon appropriate terms. [I.C., § 67-5274, as added by 1992, ch. 263, § 46, p. 783.]

67-5275. Agency record for judicial review. — (1) Within forty-two (42) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the agency record. The agency record shall consist of:

(a) the record compiled under section 67-5225, Idaho Code, when the agency action was a rule;

(b) the record compiled under section 67-5249, Idaho Code, when the agency action was an order; or

(c) any agency documents expressing the agency action when the agency action was neither an order nor a rule.

(2) By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs.

(3) The court may require corrections to the record. [I.C., § 67-5275, as added by 1992, ch. 263, § 47, p. 783.]

67-5276. Additional evidence. — (1) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material, relates to the validity of the agency action, and that:

(a) there were good reasons for failure to present it in the proceeding before the agency, the court may remand the matter to the agency with directions that the agency receive additional evidence and conduct additional factfinding.

(b) there were alleged irregularities in procedure before the agency, the court may take proof on the matter.

(2) The agency may modify its action by reason of the additional evidence and shall file any modifications, new findings, or decisions with the reviewing court. [I.C., § 67-5276, as added by 1992, ch. 263, § 48, p. 783.]

67-5277. Judicial review of issues of fact. — Judicial review shall be conducted by the court without a jury. Unless otherwise provided by statute, judicial review of disputed issues of fact must be confined to the agency record for judicial review as defined in this chapter, supplemented by additional evidence taken pursuant to section 67-5276, Idaho Code. [I.C., § 67-5277, as added by 1992, ch. 263, § 49, p. 783.]

Cited in: Jefferson County v. Eastern Idaho Regional Medical Ctr., — Idaho —, 883 P.2d 1084 (Ct. App. 1994).

67-5278. Declaratory judgment on validity or applicability of rules. — (1) The validity or applicability of a rule may be determined in an action for declaratory judgment in the district court, if it is alleged that the rule, or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner.

(2) The agency shall be made a party to the action.

(3) A declaratory judgment may be rendered whether or not the petitioner has requested the agency to pass upon the validity or applicability of the rule in question. [1965, ch. 273, § 7, p. 701; am. and redesig. 1992, ch. 263, § 50, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5207 and was amended and redesignated as § 67-5278 by § 50 of S.L. 1992, ch. 263, effective July 1, 1993.

Cited in: Idaho Falls Consol. Hosps. v. Board of County Comm'rs, 104 Idaho 628, 661 P.2d 1227 (1983).

ANALYSIS

Compliance with § 39-418.
Jurisdiction.
Right to challenge rules.

Compliance with § 39-418.

The remedies of this section are not available after a final determination of the Board unless the provisions of § 39-418 are strictly complied with; § 39-418 dictates the exclusive procedure for appeal or review of a final board decision unless the procedure fails to provide an adequate remedy. Lindstrom v. District Bd. of Health, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985).

Jurisdiction.

Where no final determination of the District Board of Health was involved, the Board did not raise the question of whether the action for declaratory relief was timely filed before the district court, the parties essentially agreed upon the facts, evidence was adduced in the district court for determination of one disputed factual issue, and neither party had challenged any of the court's findings, the district court had jurisdiction under § 39-417 to engage in the review authorized by this section. Lindstrom v. District Bd. of Health, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985).

Right to Challenge Rules.

While an applicant has no proprietary "right" to a license before it is duly issued, it will not be gainsaid that she has a "right" to consideration of her application under valid legal standards; this right was sufficient to

confer standing to challenge a rule. Rawson v. Idaho State Bd. of Cosmetology, 107 Idaho 1037, 695 P.2d 422 (Ct. App. 1985).

67-5279. Scope of review — Type of relief. — (1) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

(2) When the agency was not required by the provisions of this chapter or by other provisions of law to base its action exclusively on a record, the court shall affirm the agency action unless the court finds that the action was:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure; or

(d) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) not supported by substantial evidence on the record as a whole; or

(e) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced. [I.C., § 67-5279, as added by 1992, ch. 263, § 51, p. 783.]

Compiler's notes. Section 52 of S.L. 1992, ch. 263 contained a repeal and § 53 is compiled as § 67-5291.

Cited in: Jefferson County v. Eastern Idaho Regional Medical Ctr., — Idaho —, 883 P.2d 1084 (Ct. App. 1994).

Substantial Evidence.

Where other than an advertisement in a local newspaper and a general survey sent to psychologists on current rates, health care provider presented no other documentation of its efforts to seek the services of a qualified consultant at a medicaid allowable rate, there was substantial, competent evidence to support the hearing officer's finding that health care provider did not make sufficient effort to meet the Medicaid requirements. Boise Group Homes, Inc. v. State Dep't of Health & Welfare, 123 Idaho 908, 854 P.2d 251 (1993).

67-5280 — 67-5290. [Reserved.]

67-5291. Legislative review of adopted rules. — The standing committees of the legislature may review adopted rules which have been published in the bulletin or in the administrative code. If reviewed, the standing committee which reviewed the rules shall report to the membership of the body its findings and recommendations concerning its review of the rules. If ordered by the presiding officer, the report of the committee shall be printed in the journal. A concurrent resolution may be adopted

approving the rule, or rejecting, amending or modifying the rule where it is determined that such rule violates the legislative intent of the statute under which such rule was made, or where it is determined that any rule previously promulgated and reviewed by the legislature shall be deemed to violate the legislative intent of the statute under which such rule was made. Where an agency submits a rule or part of a rule which has been adopted or which has repealed or amended an already existing rule, the rejection, amendment or modification of the new rule by the legislature via concurrent resolution shall prevent the agency's intended action from remaining in effect beyond the date of the legislative action. It shall be the responsibility of the secretary of state to immediately notify the affected agency of the filing and effective date of any concurrent resolution enacted to approve, amend, modify, or reject an agency rule and to transmit a copy of such concurrent resolution to the director of the agency for promulgation. The agency shall be responsible for implementing legislative intent as expressed in the concurrent resolution, including, as appropriate, the reinstatement of the prior rule, if any, in the case of legislative rejection of the new rule, or the incorporation of any legislative amendments to the new rule. If a rule has been amended or modified by the legislature, the agency shall republish the rule in accordance with the provisions of chapter 52, title 67, Idaho Code, reflecting the action taken by the legislature and the effective date thereof. If a rule has been rejected by the legislature, the agency shall publish notice of such rejection in the bulletin. Except as provided in section 67-5226, Idaho Code, with respect to temporary rules, every rule promulgated within the authority conferred by law, and in accordance with the provisions of chapter 52, title 67, Idaho Code, and made effective pursuant to section 67-5224(5), Idaho Code, shall remain in full force and effect until the same is rejected, amended or modified by concurrent resolution, or until it expires as provided in section 67-5292, Idaho Code, or by its own terms. [1969, ch. 48, § 2, p. 125; am. 1976, ch. 185, § 2, p. 671; am. 1979, ch. 104, § 1, p. 250; am. 1979, ch. 112, § 1, p. 356; am. 1981, ch. 243, § 1, p. 486; am. 1985, ch. 13, § 2, p. 18; am. 1990, ch. 22, § 1, p. 33; am. and redesig. 1992, ch. 263, § 53, p. 783; am. 1995, ch. 196, § 3, p. 686.]

Compiler's notes. This section was formerly compiled as § 67-5218 and was amended and redesignated as § 67-5291 by § 53 of S.L. 1992, ch. 263, effective July 1, 1993.

Sections 1-5 of S.L. 1994, ch. 394 read: "Section 1. Except as provided in Sections 2 and 3 of this act, every rule, as that term is defined in Section 67-5201, Idaho Code, that would expire on July 1, 1994, pursuant to the provisions of Subsections (1) and (2) of Section 67-5292, Idaho Code, shall continue in full force and effect until July 1, 1995, at which time they shall expire as provided in Section 67-5292, Idaho Code.

"Section 2. All rules, as that term is defined in Section 67-5201, Idaho Code which have been affirmatively approved, modified or amended by the adoption of a Concurrent Resolution by both the Senate and House of Representatives in the Second Regular Session of the Fifty-second Idaho Legislature shall continue in full force and effect in such approved modified or amended language until July 1, 1995, at which time they shall expire as provided in Section 67-5292, Idaho Code.

"Section 3. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been rejected by the adoption of a Concurrent Resolution by both the Senate and the House of Representatives in the Second Regular Session of the Fifty-second Idaho Legislature shall be null, void and of no force and effect as provided in Section 67-5291, Idaho Code.

"Section 4. Nothing contained in this act shall be deemed to prohibit an agency, as that term is defined in Section 67-5201, Idaho Code, from amending rules which have been

approving the rule, or rejecting, amending or modifying the rule where it is determined that such rule violates the legislative intent of the statute under which such rule was made, or where it is determined that any rule previously promulgated and reviewed by the legislature shall be deemed to violate the legislative intent of the statute under which such rule was made. Where an agency submits a rule or part of a rule which has been adopted or which has repealed or amended an already existing rule, the rejection, amendment or modification of the new rule by the legislature via concurrent resolution shall prevent the agency's intended action from remaining in effect beyond the date of the legislative action. It shall be the responsibility of the secretary of state to immediately notify the affected agency of the filing and effective date of any concurrent resolution enacted to approve, amend, modify, or reject an agency rule and to transmit a copy of such concurrent resolution to the director of the agency for promulgation. The agency shall be responsible for implementing legislative intent as expressed in the concurrent resolution, including, as appropriate, the reinstatement of the prior rule, if any, in the case of legislative rejection of the new rule, or the incorporation of any legislative amendments to the new rule. If a rule has been amended or modified by the legislature, the agency shall republish the rule in accordance with the provisions of chapter 52, title 67, Idaho Code, reflecting the action taken by the legislature and the effective date thereof. If a rule has been rejected by the legislature, the agency shall publish notice of such rejection in the bulletin. Except as provided in section 67-5226, Idaho Code, with respect to temporary rules, every rule promulgated within the authority conferred by law, and in accordance with the provisions of chapter 52, title 67, Idaho Code, and made effective pursuant to section 67-5224(5), Idaho Code, shall remain in full force and effect until the same is rejected, amended or modified by concurrent resolution, or until it expires as provided in section 67-5292, Idaho Code, or by its own terms. [1969, ch. 48, § 2, p. 125; am. 1976, ch. 185, § 2, p. 671; am. 1979, ch. 104, § 1, p. 250; am. 1979, ch. 112, § 1, p. 356; am. 1981, ch. 243, § 1, p. 486; am. 1985, ch. 13, § 2, p. 18; am. 1990, ch. 22, § 1, p. 33; am. and redesig. 1992, ch. 263, § 53, p. 783; am. 1995, ch. 196, § 3, p. 686.]

Compiler's notes. This section was formerly compiled as § 67-5218 and was amended and redesignated as § 67-5291 by § 53 of S.L. 1992, ch. 263, effective July 1, 1993.

Sections 1-5 of S.L. 1994, ch. 394 read: "Section 1. Except as provided in Sections 2 and 3 of this act, every rule, as that term is defined in Section 67-5201, Idaho Code, that would expire on July 1, 1994, pursuant to the provisions of Subsections (1) and (2) of Section 67-5292, Idaho Code, shall continue in full force and effect until July 1, 1995, at which time they shall expire as provided in Section 67-5292, Idaho Code.

"Section 2. All rules, as that term is defined in Section 67-5201, Idaho Code which have been affirmatively approved, modified or amended by the adoption of a Concurrent Resolution by both the Senate and House of Representatives in the Second Regular Session of the Fifty-second Idaho Legislature shall continue in full force and effect in such approved modified or amended language until July 1, 1995, at which time they shall expire as provided in Section 67-5292, Idaho Code.

"Section 3. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been rejected by the adoption of a Concurrent Resolution by both the Senate and the House of Representatives in the Second Regular Session of the Fifty-second Idaho Legislature shall be null, void and of no force and effect as provided in Section 67-5291, Idaho Code.

"Section 4. Nothing contained in this act shall be deemed to prohibit an agency, as that term is defined in Section 67-5201, Idaho Code, from amending rules which have been

continued in full force and effect until July 1, 1995, pursuant to Section 1 and 2 of this act, according to the procedures contained in Chapter 52, Title 67, Idaho Code. Nothing contained in this act shall endow any administrative rule contained in full force and effect under this act with any more legal stature than that of an administrative rule. Nothing contained in this act shall be deemed to be a legislative approval of any rule whose force and effect has been extended by this act, and nothing contained herein shall constitute a legislative finding that any of the rules whose force and effect has been extended hereunder are consistent with the legislative intent of the statute(s) pursuant to which they were promulgated.

"Section 5. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Sections 1-5 of S.L. 1993, ch. 342 read:

"Section 1. Except as provided in Sections 2 and 3 of this act, every rule, as that term is defined in Section 67-5201, Idaho Code, that would expire on July 1, 1993, pursuant to the provisions of Subsections (1) and (2) of Sections 67-5219 [now § 67-5292] and 67-5292, Idaho Code, shall continue in full force and effect until July 1, 1994, at which time they shall expire as provided in Sections 67-5219 [now § 67-5292] and 67-5292, Idaho Code.

"Section 2. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been affirmatively approved, modified or amended by the adoption of a Concurrent Resolution by both the Senate and House of Representatives in the First Regular Session of the Fifty-second Idaho Legislature shall continue in full force and effect in such approved, modified or amended language until July 1, 1994, at which time they shall expire as provided in Sections 67-5219 [now § 67-5292] and 67-5292, Idaho Code.

"Section 3. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been rejected by the adoption of a Concurrent Resolution by both the Senate and the House of Representatives in the First Regular Session of the Fifty-second Idaho Legislature shall be null, void and of no force and effect as provided in Sections 67-5218 [now § 67-5291] and 67-5291, Idaho Code.

"Section 4. Nothing contained in this act shall be deemed to prohibit an agency, as that term is defined in Section 67-5201, Idaho Code, from amending rules which have been continued in full force and effect until July 1, 1994, pursuant to Sections 1 and 2 of this act, according to the procedures contained in Chapter 52, Title 67, Idaho Code. Nothing contained in this act shall endow any administrative rule continued in full force and effect under this act with any more legal stature than that of an administrative rule. Nothing contained in this act shall be deemed to be a legislative approval of any rule whose force and effect has been extended by this act, and nothing contained herein shall constitute a legislative finding that any of the rules whose force and effect has been extended hereunder are consistent with the legislative intent of the statute(s) pursuant to which they were promulgated.

"Section 5. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Section 52 of S.L. 1992, ch. 263 contained a repeal and § 51 is compiled as § 67-5279.

Section 2 of S.L. 1995, ch. 196 is compiled as § 67-5226.

ANALYSIS

Authority of agency.
Concurrent resolution.
—Required contents.
Constitutionality.
Legislative approval advisory.
Purpose.
Rejection of rules.

Authority of Agency.

An agency must be acting within the grant of its authority for this section to apply; accordingly, where the Public Utilities Commission was found to be without specific statutory authority to promulgate intervenor funding rules allowing costs and attorney fees in proceedings under the Public Utility Regulatory Policies Act, 16 U.S.C.A. § 2601, the failure of the legislature to object to the promulgation was an irrelevant consideration in determining the validity of the rules. Idaho Power Co. v. Idaho Pub. Utils. Comm'n, 102 Idaho 744, 639 P.2d 442 (1981).

Concurrent Resolution.

The use of a concurrent resolution, as provided for in this section, does not bestow any greater dignity, power or authority on a concurrent resolution other than that provided in this section for rejecting a rule or regulation. Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

—Required Contents.

Where, conspicuously absent from a concurrent resolution rejecting and declaring null and void, and of no force and effect, administrative rules and regulations regarding Individual/Subsurface Sewage Disposal Systems, was any statement that the regulations were

violative of legislative intent, said resolution did not satisfy the requirements of this section and was a nullity. Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

Constitutionality.

Both the Administrative Procedure Act and this section were created in the constitutionally mandated manner. Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

The condition enunciated in this section is that the rules which the legislature has delegated the authority to promulgate comply with the legislative intent of the enabling statute, and this conditioned grant of authority is consistent with the principle of separation of powers as set forth in Const., Art. 2, § 1, as these acts relate to the executive department. Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

This section was created in the constitutionally mandated manner and is substantively proper under the terms of Const., Art. 2, § 1, in that it does not permit the exercise of power by the legislature in rejecting rules or regulations properly belonging to the executive or the judiciary. Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

This section, as to rescinding rules and regulations pursuant thereto, is constitutional, however, this is not to suggest that all such legislative statutory reservations or rejections of rules or regulations pursuant thereto are necessarily consistent with the separation of powers principles. Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

Legislative Approval Advisory.

Any legislative approval of a rule, which is granted pursuant to § 67-5217 and this section, has merely a nonbinding advisory effect upon the Supreme Court in its resolution of legal issues; to permit the legislature to decide what administrative rules do or do not conflict with statutory law would constitute an abrogation of the judicial power in violation of Const.. Art 2, § 1 and Art. 5, §§ 2 and 13. Holly Care Center v. State, Dep't of Emp., 110 Idaho 76, 714 P.2d 45 (1986).

Purpose.

The legislature in enacting § 67-5217 and this section has attempted to give to itself the power both to review administrative rules and to approve, modify, or to veto them as the case may be. Holly Care Center v. State, Dep't of Emp., 110 Idaho 76, 714 P.2d 45 (1986).

Rejection of Rules.

This section makes clear that the legislature has reserved unto itself the power to reject an administrative rule or regulation as part of the statutory process and this reservation is not an intrusion on the judiciary's constitutional powers. Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

Opinions of Attorney General. A nutrient management plan developed by the Idaho Department of Health and Welfare pursuant to § 39-105 is subject to legislative review pursuant to §§ 67-5223 and this section and further, the limitation on authority granted to the department and the broad authority granted the board supports the conclusion that the plan is subject to review by the board. OAG 94-2.

67-5292. Expiration of administrative rules. — (1) Notwithstanding any other provision of this chapter to the contrary, every rule adopted after June 30, 1990, shall automatically expire on July 1 of the following year unless such rule is extended by statute. Extended rules shall then continue to expire annually on July 1 of each succeeding year unless extended by statute in each such succeeding year.

(2) All rules adopted prior to June 30, 1990, shall expire on July 1, 1991, unless extended by statute. Thereafter, any such rules which are extended shall then continue to expire annually on July 1 of each succeeding year unless extended by statute in each succeeding year.

(3) Rules adopted pursuant to this chapter may be extended in whole or in part. When any part of an existing rule is amended, then that entire rule shall be subject to the provisions of this section.

(4) This section is a critical and integral part of this chapter. If any portion of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall be deemed to affect all rules adopted subsequent to the effective date of this act and such rules shall be deemed null, void and of no further force and effect. [I.C., § 67-5219, as